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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 23 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

Implementation of Section 304 of the)
Telecommunications Act of 1996)

CS Docket No. 97-80

Commercial Availability of)
Navigational Devices)

REPLY COMMENTS OF MOTOROLA

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Motorola, Inc. ("Motorola") respectfully submits its reply comments regarding the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ As set forth below, the record in this proceeding underscores the importance of taking a practical approach to implement Section 629 given existing technical incompatibility between MVPD networks and the ongoing voluntary, industry efforts working toward market-based approaches to enhance the availability of MVPD services and equipment.

I. INTRODUCTION

The record crystallizes the need for the FCC to balance carefully the interests of consumers, equipment manufacturers, multichannel video programming distributors ("MVPDs") and retailers in promoting the equipment availability objectives of Section 629. While the clear goal of Section 629 is to make equipment available from a source other than the MVPD operator, Congress also sought to maintain an MVPD's ability to control system security and promote equipment availability through industry-led standards efforts. The

¹ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, FCC 97-53 (rel. Feb. 20, 1997) ("*Notice*" or "*NPRM*").

comments highlight the occasional tensions underlying these objectives and the importance of using voluntary industry efforts and market forces to achieve the level of equipment availability envisioned by Congress.

In particular, Motorola submits that the record supports the following broad principles, which the Commission should use to guide its implementation of Section 629:

- The FCC must take a practical approach to promoting equipment availability consistent with consumers' interests, technical feasibility and marketplace demands;
- Reliance on voluntary industry standards will promote the objectives of Section 629;
- Commercial availability will be hindered by any approach that increases the price of consumer equipment; and
- The legitimate intellectual property interests of manufacturers must not be weakened by compulsory licensing or overly broad network disclosure requirements.

To this end, Motorola supports establishing a "right to attach" consumer equipment to an MVPD network provided that the FCC makes clear that operators can take reasonable steps to maintain the integrity of their networks.

II. THE FCC SHOULD TAKE A PRACTICAL APPROACH TO PROMOTE COMMERCIAL AVAILABILITY TAKING INTO ACCOUNT MARKET REALITIES AND TECHNICAL INCOMPATIBILITY OF MVPD SYSTEMS

A. A Number of Commenters Urged the FCC to Take a Practical Approach to Implement Section 629

In its initial comments, Motorola suggested that the Commission take a practical approach to satisfy the objectives of the Act by establishing a rule providing a right to attach consumer equipment to an MVPD network subject to reasonable limitations such as preventing

network harm or signal leakage.² Along similar lines, a number of commenters also urged the Commission to take limited, practical steps to implement Section 629 that consider the present incompatibility between MVPD systems and the interest in maintaining system security.

A number of parties joined Motorola in supporting a right to attach as a means to promote the availability of consumer equipment by giving consumers the right to obtain equipment from sources other than the MVPD provider.³ For example, Time Warner Entertainment Company, L.P. proposed that this right should be limited to devices that: (1) do not interfere with MVPD services and functions, including navigational software and branding information; (2) do not harm an MVPD's network; and (3) are not used to facilitate unauthorized reception of service.⁴ Motorola believes that such a workable standard is consistent with the goals of Section 629 in promoting equipment availability while maintaining the legitimate interests of MVPD operators to protect against harm to their network or theft of service.

Second, several equipment manufacturers and MVPD system operators emphasized that MVPD network equipment should be excluded from any rules adopted under Section 629.⁵ These commenters explained that network equipment may include network interface modules ("NIMs"), stand-alone security interfaces, "residential gateways," or equipment used to deliver telephone service over a cable system that connects an MVPD's network with a

² Motorola Comments at 11-13.

³ See, e.g., Commercial Engineering Comments at 2; Telecommunications Industry Association ("TIA") Comments at 11-12.

⁴ Time Warner Comments at 11-15; see also TIA Comments at 12.

⁵ See, e.g., General Instrument ("GI") Comments at 43-47; National Cable Television Association ("NCTA") Comments at 18-19; US West Comments at 10-11.

consumer's home wiring.⁶ Motorola supports this interpretation of Section 629 in order to allow an MVPD operator to maintain system integrity and because this equipment is used by operators, not consumers, to efficiently offer network-related features and services.

Finally, the record clearly illustrates that equipment interoperability or portability is not fully feasible at the present time and that these objectives should be left to industry efforts and market demand. As an initial matter, NCTA, Time Warner and others noted that Section 629 mandates neither interoperability nor portability.⁷ Further, equipment manufacturers, cable operators and emerging technology MVPD providers described the variety of technical issues and system incompatibility that precludes equipment interoperability or portability. For example, Time Warner detailed the important distinctions between analog and digital equipment, while Primestar Partners, L.P. noted that four of the five current direct broadcast satellite (DBS)/direct to home (DTH) providers "use digital technologies that possess substantial technical differences."⁸

In addition, equipment manufacturers and MVPD operators explained that any portability or interoperability requirement for analog equipment, even if feasible, would be impractical because it would require redesign and replacement of embedded equipment and modification of existing security platforms.⁹ Moreover, even Circuit City and the Consumer Electronics Retailers Coalition did not go so far as to propose that consumer equipment should

⁶ See, e.g., NCTA Comments at 18-19; GI Comments at 44-46, U S West Comments at 10-11.

⁷ NCTA Comments at 35-36; Time Warner Comments at 32-33.

⁸ Time Warner Comments at 32-36; Primestar Partners, L.P. ("Primestar") Comments at 14-15.

⁹ Scientific-Atlanta Comments at 12-13; Time Warner Comments at 34-35; Zenith
(Continued...)

be interoperable among different MVPD platforms.¹⁰ Accordingly, the technical and practical limitations of MVPD systems noted by commenters in the record strongly counsel against mandating either equipment interoperability or portability.

B. The FCC Should Ensure That Its Rules Do Not Unduly Favor One MVPD Platform or Technology

Motorola's initial comments emphasized that the Commission should ensure that any rules adopted in this proceeding continue to promote product innovation and do not favor one technology over another.¹¹ Similarly, the record demonstrates that any commercial availability rules risk conferring improper regulatory advantages on one MVPD platform over another. Such a result would be sharply inconsistent with the pro-competitive goals of the Telecommunications Act of 1996.

For example, to the extent the FCC concludes that open video systems (OVS) are excluded from any commercial availability requirement,¹² the Commission should be cautious about imposing onerous rules on cable or other MVPD operators that are not applicable to OVS operators. Moreover, such a regulatory advantage might also create an unintended incentive to convert existing cable systems to OVS platforms as cable operators seek to level the playing field concerning their equipment offerings. A more carefully crafted approach for non-OVS operators could ameliorate such anticompetitive consequences. In Motorola's view,

(...Continued)
Comments at 4, 13-15.

¹⁰ See Circuit City Comments at 5; Consumer Electronics Retailers Coalition Comments at 8-9.

¹¹ Motorola Comments at 5-10.

¹² Notice, ¶ 15.

the Commission should seek to minimize regulation for all operators, so market forces have the maximum opportunity to work.

III. THE COMMISSION SHOULD RELY ON INDUSTRY STANDARDS TO PROMOTE THE OBJECTIVES OF THE ACT

The record overwhelmingly urges the Commission to rely on voluntary, private industry standards efforts to promote equipment availability and avoid imposing any mandated standards.¹³ As the Information Technology Industry Council and Computing Technology Industry Association ("ITI/COMPTIA") explained, mandated standards prevent manufacturers and operators from rapidly adjusting to changes in consumer demand and technology.¹⁴ Similarly, Echelon and others urged the Commission to avoid any mandated standards because such standards would stifle innovation, discourage new product development and freeze current technology into a standard that may soon become obsolete.¹⁵ Further, several commenters noted that mandated standards are unnecessary given ongoing industry standards efforts in several areas related to MVPD equipment.¹⁶ Accordingly, Motorola opposes any attempt to impose mandated equipment standards and maintains that the FCC should encourage voluntary, industry-led efforts in this regard.

¹³ See, e.g., Ad Hoc Computer and High-Technology Coalition Comments at 3, 19; Echelon Comments at 16-18; NCTA Comments at 32-34; US West Comments at 12-13.

¹⁴ ITI/COMPTIA Comments at 14-15.

¹⁵ Echelon Comments at 16-18; Ameritech Comments at 6-7.

¹⁶ Bell Atlantic/NYNEX Comments at 2-3; NCTA Comments at 32-34; Scientific-Atlanta Comments at 16-19; TIA Comments at 10.

IV. THE COMMISSION SHOULD REJECT ANY PROPOSED IMPLEMENTATION OF THE ACT THAT WILL INCREASE THE PRICE OF MVPD EQUIPMENT TO CONSUMERS

The objective of increased availability of consumer equipment and consumer choice will be substantially undermined if any proposed "solution" increases equipment cost or restricts options responsive to different consumer needs. The record clearly shows that it would be contrary to the intent of Section 629 to take any action that would effectively reduce consumer choice of equipment by requiring "one-size-fits-all" solutions, thereby eliminating the availability of less expensive alternatives.¹⁷ Accordingly, Motorola submits that any Commission rules should be sufficiently flexible to allow manufacturers and MVPD operators the freedom to design whatever equipment, features or functions to respond to consumers' needs. Otherwise, the Commission may inadvertently become involved in making technology decisions best left to the market.

V. COMPULSORY LICENSING REQUIREMENTS OR BROAD NETWORK DISCLOSURE OBLIGATIONS ARE NOT MANDATED BY THE ACT AND WILL NOT INCREASE THE AVAILABILITY OF EQUIPMENT

The record clearly demonstrates that the Commission should not adopt any compulsory licensing requirement or otherwise impair the intellectual property rights of equipment manufacturers. For example, a number of commenters agreed with Motorola that the Commission does not have authority to impose such a requirement under the narrow limits of Section 629 or any other provision in the Act.¹⁸ Similarly, Scientific-Atlanta explained that compulsory licensing would jeopardize security and is unnecessary given the market incentives

¹⁷ TIA Comments at 17; DirecTV/Hughes Comments at 14-15.

¹⁸ GI Comments at 100-107; NCTA Comments at 44-46.

for voluntary licensing.¹⁹ DirecTV/Hughes Network Systems added that compulsory licensing of DBS technology would reduce the incentive to invest further in innovative technologies and would remove the ability of providers "to control the quality of the equipment used by their subscribers, to the subscribers' detriment."²⁰

In addition, Motorola disagrees with those few commenters who suggested imposing extensive network disclosure obligations on system operators, similar to those obligations imposed on telephone companies under Title II of the Act.²¹ As an initial matter, there is no clear statutory mandate in Section 629 to adopt broad disclosure obligations to promote equipment availability. In any event, if the Commission believes that some limited disclosure obligation is necessary to facilitate the attachment of consumer equipment, the FCC must ensure that disclosure requirements do not compromise the proprietary rights of equipment manufacturers. To this end, the Commission should require that if disclosure involves proprietary information belonging to a third party, the party requesting disclosure must negotiate directly with the third-party manufacturer for release of the information. Such an approach would be consistent with the Commission's policy adopted to enact the statutorily mandated disclosure requirement of Section 251(c)(5), which it found legitimately balanced the interests of the party seeking disclosure with manufacturers' interest in protecting against

¹⁹ Scientific-Atlanta Comments at 30.

²⁰ DirecTV/Hughes Comments at 11.

²¹ See Circuit City Comments at 21-22; Consumer Electronics Manufacturing Association Comments at 13-14.

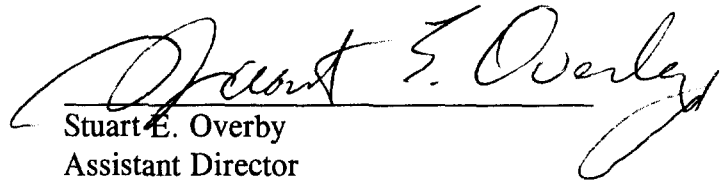
misuse of their proprietary information.²² We note that this policy also included a reasonable regulatory approach regarding market and technical trials.

VI. CONCLUSION

For the reasons stated above, the Commission should adopt only a reasonable right to attach consumer equipment to MVPD networks. To this end, the Commission may fulfill its Section 629 obligations by relying on industry standards to ensure that its rules are practical, do not increase consumer prices, and protect manufacturers' proprietary rights.

Respectfully submitted,

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²² *Interconnection Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19506-07 (1996).